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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,352	02/06/2004	Gerd Scharminghausen	ESN-45	5252
26875 7590 01/17/2007 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER EWALD, MARIA VERONICA	
			ART UNIT	PAPER NUMBER
			1722	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/17/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/774,352

Applicant(s)

SCHARNINGHAUSEN ET AL.

Examiner

Maria Veronica D. Ewald

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

13. Claims 6 and 10 are objected to because of the following informalities: As written, line 1 of claim 6 states "...wherein the wall delimiting the forming space..." In light of the amendment of claim 1, claims 6 and 10 currently lack antecedent basis, since the wall is no longer identified as delimiting the forming space, but the forming space now *includes the wall*. Thus, claim 6 should be corrected to state that the wall is part of the forming space.

Furthermore, claim 2 is objected to because as written, line 1 of claim 2 states "...wherein the cutting body is introducible..." There is no previous reference in claim 1 to a cutting body. Prior reference is to a cutting device and a cutter. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 10 and 12 – 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kato (U.S. 4,503,006). Kato teaches a portioning device (figure 1) having a forming space (item 6 – figure 1) adapted to be filled by a mass of the bulk material,

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the forming space including a wall for forming the mass (figure 1); an output opening in the wall (item 10 – figure 1); and a cutting device (item 12 – figure 1) for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter (item 12 – figure 1) that is at least partially introducible into the forming space, and each of the plurality of mass portions being output from the forming space through the output opening (figure 1); wherein the cutting body is introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space; the forming space has a filling opening through which the mass can be filled into the forming space (figure 1); the forming space has a geometry matched to the form of an end product (figure 1); the forming space is defined inside a tube through which the mass is axially transportable (figure 1); the wall delimiting the forming space has a slit into which the cutter can be introduced (figure 1); the slit extends far enough so that the cutter can cut completely through the cross section of the forming space (figure 1); the cutter is introducible into the forming space at a place such that each of the plurality of mass portions formed, when the cutter is introduced, is supported by at least part of the wall (figure 1); the slit is spaced at a distance from an output opening of the forming space such that a section of the forming space corresponds at least approximately to the size of each of the plurality of mass portions (figure 1); the wall delimiting the forming space is substantially cylindrical and the slit almost completely penetrates the wall (figure 1); and a means for fastening cutting device as an attachment to a device for transporting and/or mincing bulk material (figure 1).

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Claims 1 – 5, 12 – 13 and 15 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Covington et al (U.S. 4,112,545). Covington teaches a portioning device (figure 5) having a forming space (item 58 – figure 5) adapted to be filled by a mass of the bulk material, the forming space including a wall for forming the mass (figure 5); an output opening in the wall (figure 5); and a cutting device (item 44 – figure 5) for portioning the mass filled into the forming space (column 4, lines 37 – 42); into a plurality of mass portions, the cutting device having a cutter that is at least partially introducible into the forming space, and each of the plurality of mass portions being output from the forming space through the output openings (figure 5; column 4, lines 37 – 42); wherein the cutting body is introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space; the forming space has a filling opening through which the mass can be filled into the forming space (figure 5); wherein the forming space has a geometry matched to the form of an end product (figure 5); wherein the forming space is defined inside a tube through which the mass is axially transportable (figure 5); wherein the cutter is a two-bladed, rotatable cutting knife (figure 5; column 3, lines 27 – 31).

With respect to claims 12 – 13 and 15 – 17, the reference further teaches that there is a means for fastening the cutting device as an attachment to a device for transporting and/or mincing bulk material (figure 4; column 4, lines 35 – 45); wherein there are means for transporting the mass, the means of transport being discontinuously operable, and the timing of the discontinuous operation cooperating with the introductory motion of the cutter into the forming space for portioning the mass

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into the plurality of mass portions (column 4, lines 25 – 65); and wherein the geometry has a cross-section that is substantially rotationally symmetrical and oval (figure 5).

Claims 1 – 5, 11 – 13 and 16 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilson et al (U.S. 2,497,724). Gilson teaches a portioning device (figure 1) having a forming space (item 20 – figure 1) adapted to be filled by a mass of the bulk material, the forming space including by a wall for forming the mass (figure 1); an output opening in the wall (figure 1); and a cutting device (item 45 – figure 1) for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter (items 56 – 58 – figures 3 – 4; column 3, lines 50 – 67) that is at least partially introducible into the forming space, and each of the plurality of mass portions being output from the forming space through the output openings; the cutting body in introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space; the forming space has a filling opening through which the mass can be filled into the forming space (figure 1); the forming space has a geometry matched to the form of an end product (figure 1); the forming space is defined inside a tube through which the mass is axially transportable (figure 1); the cutter is a two-bladed, rotatable cutting knife (figures 3 – 4); and furthermore, there are means for fastening the cutting device as an attachment to a device for transporting and/or mincing bulk material (figure 1); and the geometry has a cross-section that is substantially rotationally symmetrical and oval (figure 1).

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Claims 1 – 9 and 12 – 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Morikawa et al (U.S. 5,289,764). Morikawa teach a portioning device (figure 2) having a forming space (portions about item 35 – figure 3; column 6, lines 10 – 15) adapted to be filled by a mass of the bulk material, the forming space including a wall for forming the mass (item 56 – figure 3; column 6, lines 7 – 23); an output opening in the wall (figure 3); and a cutting device (item 38 – figure 3) for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter (item 38 – figure 3) that is at least partially introducible into the forming space, and each of the plurality of mass portions being output from the forming space through the output openings; the cutting body is introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space; the forming space has a filling opening through which the mass can be filled into the forming space (figure 3); the forming space has a geometry matched to the form of an end product (figure 3); the forming space is defined inside a tube through which the mass is axially transportable (figure 3); the wall delimiting the forming space has a slit into which the cutter can be introduced (figure 3); the slit extends far enough so that the cutter can cut completely through the cross-section of the forming space (figure 3); the cutter is introducible into the forming space at a place such that each of the plurality of mass portions formed, when the cutter is introduced, is supported by at least part of the wall (figure 3); the slit is spaced at a distance from an output opening of the forming space such that a section of the forming space corresponds at least approximately to the size of each of the plurality of mass portions (figure 3); wherein

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there are means for fastening the cutting device as an attachment to a device for transporting and/or mincing bulk material (figures 3, 5 and 8); wherein there is a smoothing belt (items 44 and 46 – figure 3) that can receive the plurality of mass portions, the smoothing belt cooperating with at least one shaping surface to aftershape each of the plurality of mass portions; and means for transporting the mass, the means of transport are discontinuously operable, and the timing of the discontinuous operation cooperating with the introductory motion of the cutter into the forming space for portioning the mass into the plurality of mass portions (figures 3, 5 and 8).

### ***Response to Arguments***

15. Applicant's arguments filed October 23, 2006 have been fully considered but they are not persuasive. Applicant has argued that each of the references previously-cited do not anticipate claim 1. Examiner disagrees.

With respect to the reference of Kato, Applicant has argued that the forming space in the apparatus of Kato is inside the die (item 5 – figure 1). Applicant has also argued that subsequent to exiting from the die, the material undergoes no further shaping. Examiner agrees that the die provides the tag pin silhouette or shape; however, the material leaving the die is still in bulk form, or in one large block and has not been individually shaped into each tag pin. Thus, the forming space, denoted as item 6, gives the final individual form to each tag pin, in that the cutting device is introduced into the forming space to thereby cut the bulk material into individual tag pins.

With respect to the reference of Covington, Applicant has argued that the cutting blades are located outside the forming space; however, Examiner disagrees. In the previous office action, Examiner denoted the forming space as items 38 and 58. Thus, cutting device (item 44 – figure 1) is partially introducible into the forming space denoted as 58. The portioned meat product is transported through opening 38 into space 58. Space 58 is comprised of a lower wall through which the cut meat or sausage is transported through an outlet in the lower wall onto a conveyor below the apparatus.

With respect to the reference of Gilson, Applicant has argued that Gilson does not teach that die member 20 is part of a forming space. However, Examiner disagrees. Gilson, et al. teach that die member 20 is used *for forming the outside of the pipe* (column 2, lines 42 – 43) and thus, *is a forming space for forming the mass of bulk material*. Furthermore, because die member 20 is used for forming the outside of the pipe, the cutting device is introducible into the forming space to cut the bulk material into mass portions.

With respect to the reference of Morikawa, et al., Applicant has argued that the forming space is part of the reciprocating hopper 15. Applicant further argues that the forming space ends at the walls' lower ends and thus, at the lower ends, the dough is no longer supported by the hopper, and therefore, the cutting device 38 is not introducible into the forming space. Examiner disagrees. The forming space is comprised of the lower end of the hopper, which is comprised by the first and/or second dough-supporting members (items 30 and 56 – figure 3), the dough-cutting member and the dough outlet (column 6, lines 20 – 23). In addition, Morikawa, et al. teach that the

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dough outlet lies between the dough cutter (item 38 – figure 3) and the dough supporting member (item 56 – figure 3). Thus, because Morikawa, et al. consider the cutter and the supporting member as part of the hopper, the lower portion *is a forming space* with a wall denoted as the supporting member 56, with the outlet opening in the lower wall of the hopper denoted as outlet 35 *and a cutter partially introducible into the forming space*, since the cutter lies above the second supporting member 56, which delineates the bottom of the hopper.

### ***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maria Veronica D. Ewald whose telephone number is 571-272-8519. The examiner can normally be reached on M-F, 8 - 4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MVE

  
YOGENDRA N. GUPTA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700